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SUBJECT: ICC PROSECUTOR MORENO-OCAMPO BRIEFS UNSC

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11. SUMMARY: In his December 3 briefing to the Security Council (SC), International Criminal Court (ICC) Prosecutor Moreno-Ocampo provided a detailed chronology of the three investigations conducted pursuant to UNSCR 1593, which referred the situation in Darfur to the ICC. Ocampo's remarks focused on the case against Sudanese President Bashir. All SC members spoke, and the Council divided along predictable lines concerning Article 16 deferral. Members expressing opposition to deferral at this time were Belgium, Costa Rica, Croatia, France, Italy, Panama, the United Kingdom and the United States. Members supporting deferral were Burkina Faso, China, Indonesia, Libya, Russia, South Africa and Vietnam. END SUMMARY.

Ocampo Highlights

12. While discussing the case against Bashir, Ocampo alleged that recent GOS statements threatening reprisals against UN and humanitarian workers are confirmation of criminal intent. Ocampo said that ICC Judges would rule shortly on the application for an arrest warrant, arguing that the Council must be prepared for this ruling, and, should an arrest warrant be issued, united in resolve to ensure its execution. Ocampo also briefly discussed the Haskanita case and explicitly noted that all arrest warrants and requests for arrest warrants have been made public; there are no other pending requests. Ocampo concluded by observing that peace, security, humanitarian aid and justice cannot succeed in isolation, but that "as long as the arsonists are in charge, it does not matter how many fire-fighters you send. There will never be enough."

Council Debate on Deferral

13. As the first speaker, Libya framed the Council debate as a choice between peace or accountability, claiming that Ocampo had failed to address the apprehensions of the regional organizations that favor Article 16 deferral -- the African Union, Organization of Islamic Countries, Arab League, and Non-Aligned Movement. China said that judicial action against impunity can only be successful when conflict has ceased, and peace has been consolidated. South Africa asserted that Article 16 was drafted to allow the Council to resolve any challenges that arise between peace and justice, and asked Ocampo whether he would consider Council contemplation of Article 16 deferral as an attempt to "cover up" Bashir's actions. Ocampo said that it is Bashir who is trying to cover up his crimes through diplomatic initiatives with the Council and regional organizations by promising actions -- ceasefires, disarming militias -- that are never delivered. South Africa reiterated that when the Council takes up this issue, it must balance the need for international peace with the fight against impunity.

14. Belgium was the first of Council members opposing Article

16 deferral to speak and emphasized that the allegations against Bashir -- using State apparatus to destroy ethnic groups; systematic rape aimed at annihilating populations, and methodical starvation of targeted groups -- describe an atmosphere of impunity that precludes peace. Ambassador DiCarlo conveyed the U.S. commitment to the rule of law, telling the Council that the United States' previous actions "should leave no doubt about the strength of our commitments." The United Kingdom acknowledged Council members' suggestion that Article 16 deferral should be considered, but strongly stated "we see no justification at present for the suspension of the ICC's work in Darfur." France reiterated that the GOS must cooperate with the ICC with regard to executing the Haroun and Kushayb arrest warrants, a call that many SC members echoed. Costa Rica made a strong statement that the Council should consider what its next steps to enforce these arrest warrants would be.

Wolff